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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RONALD CASARES SOLIZ, Defendant and Appellant.	E048111 (Super.Ct.No. RIF116509) OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez, Judge. Affirmed with directions.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Ronald Casares Soliz[1] guilty of discharging a firearm at an occupied motor vehicle (Pen. Code, § 246)[2] (count 2); and felon in possession of a firearm (§ 12021, subd. (a)(1)) (count 3).[3] The jury also found true that defendant caused great bodily injury by personally and intentionally discharging a firearm (§§ 1192.7, subd. (c)(8), 12022.53, subd. (d)) in the commission of count 2.[4] Defendant was sentenced to a total term of 30 years to life in state prison: the middle term of five years for count 2, plus a consecutive term of 25 years to life for the enhancement attached to count 2, and a concurrent midterm of two years for count 3. On appeal, defendant contends (1) his sentence on count 3 should have been stayed pursuant to section 654; and (2) the abstract of judgment should be corrected to reflect the sentence imposed. We agree that the abstract of judgment must be corrected, but reject defendant's remaining contention.

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[1] The court notes the reporter's transcript reflects defendant spelling his middle name "S-a-r-e-s"; however, throughout the record, his name appears as Casares.

[2] All future statutory references are to the Penal Code unless otherwise stated.

[3] Defendant's codefendant, Juan Manuel Solis, is not a party to this appeal. Because codefendant Solis planned to introduce statements to the police, which were incriminating to defendant, and defendant did not know whether or not he was going to testify, the joint trial was conducted before two separate juries.

[4] The jury found defendant not guilty of being an active participant in a criminal street gang (§ 186.22, subd. (a)) as charged in count 4. The jury also found not true the gang enhancement allegation (§ 186.22, subd. (b)) attached to counts 2-3. The jury was unable to reach a verdict on the attempted premediated murder charge (§§ 664, 187), in count 1. The trial court declared a mistrial as to count 1, and it was later dismissed.

I

FACTUAL BACKGROUND[5]

On April 25, 2004, Victor Mendez was driving home in a residential neighborhood when he saw a maroon Mitsubishi Eclipse car approaching him from the opposite direction. Mendez noticed that Solis was driving the vehicle and defendant was in the passenger seat. Mendez recognized Solis and defendant from the past. Defendant and Mendez attended high school together for four years. Solis pulled his car to the side of the road, and defendant immediately exited the vehicle. Defendant then walked around to the back of the car, and crossed the street as Mendez continued to approach defendant's direction. Mendez noticed that defendant had one of his hands behind his back.

As Mendez approached defendant, defendant pulled his arm from behind his back and fired one or two shots from a small automatic gun at Mendez's vehicle. A bullet went through Mendez's windshield and struck him in the chest near his heart and exited out of his left arm. Fearing for his life, Mendez drove to the hospital as fast as he could.

[5] The factual background is limited to the crimes to which defendant was convicted and does not include any of the gang evidence.

Mendez was interviewed by a police officer at the hospital. He informed the officer about the circumstances of the incident, and he identified defendant as the person who had shot him.[6]

Defendant was apprehended on May 27, 2004, by senior probation officer Kamlyn Navarro. Defendant was found hiding in a closet of a relative's house. While being transported to the police station, defendant said, "'All this for a probation violation, Ms. Navarro?'" After the probation officer chuckled, defendant voluntarily stated, "'I didn't shoot nobody, Ms. Navarro. I didn't shoot nobody, Ms. Navarro.'"

Defendant testified on his own behalf. He denied shooting Mendez or possessing a gun on April 25, 2004. He explained that he had not owned a gun since he was convicted of grand theft auto in 2003. He admitted hiding from the police on the day he was arrested, but denied hiding in a closet. He explained that he made the statement to Navarro, i.e., "I didn't shoot nobody," after Navarro accused him of shooting someone.

Codefendant Solis testified that defendant told him in the past that he did not like Mendez because Mendez "hung around with Black people." Solis explained that on the day of the incident, April 25, 2004, he had met defendant at a friend's house. He left his friend's house with defendant, in Solis's car, to buy methamphetamine. As he and defendant were

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[6] Before Solis's jury, Detective Madsen testified about his interview with Solis on April 25, 2004. Solis informed the detective that he was driving his vehicle, with defendant as a passenger, and that defendant had a gun in his lap. When defendant saw Mendez's car approaching, he recognized Mendez as someone he did not like. Defendant commented to Solis that he wanted to "bust," or "shoot someone." Solis told defendant not to do it in his car, so defendant got out of the vehicle. Solis then heard a couple of gunshots. Defendant came back to Solis's vehicle and said, "'Let's get out of here.'" These statements to the detective by Solis prompted dual jury trials.

driving on Grove Street, they saw Mendez driving toward their direction. Defendant asked Solis to pull over because he was "going to bust him," meaning shoot Mendez. Solis pulled over, and defendant exited the vehicle. As defendant was exiting the vehicle, Solis saw him pull out a previously concealed gun from under his jacket. Defendant then exited Solis's vehicle. Solis drove away and then heard a couple of gunshots. As Solis was stopped at a stop sign, defendant jumped back into his car and said, "'Let's get out of here.'"

The parties stipulated that defendant had previously been convicted of a felony.

II

DISCUSSION

A. *Section 654*

Defendant contends that his concurrent two-year sentence for felon in possession of a firearm should have been stayed pursuant to section 654, because the evidence showed that he possessed the firearm with the same intent and objective as his conviction for discharging a firearm at an occupied motor vehicle. We disagree.

Under section 654, "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." The statute thus prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

Whether a course of conduct is indivisible for purposes of section 654 depends on the intent and objective of the actor. If all the offenses are incidental to one objective, the defendant may be punished for any one of them, but not for more than one. (*People v. Latimer*, *supra*, 5 Cal.4th at p. 1208.) On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives, which were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. (*People v. Centers* (1999) 73 Cal.App.4th 84, 98 [Fourth Dist., Div. Two].)

The question of whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) "'We must "view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" [Citation.]' [Citation.]" (*Id.* at pp. 1312-1313.)

"'Whether a violation of section 12021, forbidding persons convicted of felonies from possessing firearms . . . constitutes a divisible transaction from the offense in which he employs the weapon depends upon the facts and evidence of each individual case. Thus where the evidence shows a possession distinctly antecedent and separate from the primary offense, punishment on both crimes has been approved. On the other hand, where the

evidence shows a possession only in conjunction with the primary offense, then punishment for the illegal possession of the firearm has been held to be improper where it is the lesser offense.' [Citation.]" (*People v. Bradford* (1976) 17 Cal.3d 8, 22 (*Bradford*), quoting *People v. Venegas* (1970) 10 Cal.App.3d 814, 821 (*Venegas*); see also *People v. Jones* (2002) 103 Cal.App.4th 1139, 1143 (*Jones*).)

In *Venegas*, the defendant was convicted of assault with a deadly weapon with intent to commit murder and possession of a firearm by a convicted felon. (*Venegas*, *supra*, 10 Cal.App.3d at p. 817.) There was no evidence that the defendant possessed the gun prior to the shooting, and the defense offered evidence suggesting he obtained the gun during a struggle moments before the shooting. (*Id*. at pp. 817-820.) The trial court meted out multiple punishments, and the appellate court reversed. The evidence showed "possession only at the time defendant shot [the victim.] Not only was the possession physically simultaneous, but the possession was incidental to only one objective, namely to shoot [the victim.]" (*Id*. at p. 821.) Summing up the law, the court stated: "Whether a violation of section 12021, forbidding persons convicted of felonies from possessing firearms concealable upon the person, constitutes a divisible transaction from the offense in which he employs the weapon depends upon the facts and evidence of each individual case. [Citation.] Thus where the evidence shows a possession distinctly antecedent and separate from the primary offense, punishment on both crimes has been approved. [Citations.] On the other hand, where the evidence shows a possession only in conjunction with the primary offense, then punishment for the illegal possession of the firearm has been held to be improper where it is the lesser offense." (*Venegas*, at p. 821.)

In *Bradford*, an officer pulled the defendant over for speeding. The defendant exited his vehicle, approached the officer, and wrested the officer's weapon away from him. The defendant then fired five shots at the officer. A jury convicted the defendant of assault with a deadly weapon upon a peace officer and possession of a firearm by a felon. (*Bradford*, *supra*, 17 Cal.3d at p. 13.) The trial court imposed concurrent sentences on the two counts. (*Id*. at p. 19.) The appellate court held that punishment on the possession count, the lesser charge, must be stayed because the defendant's possession of the officer's handgun "was not 'antecedent and separate' from his use of the revolver in assaulting the officer." (*Id*. at p. 22.)

In *People v. Ratcliff* (1990) 223 Cal.App.3d 1401 [Fourth Dist., Div. Two] (*Ratcliff*), the defendant committed two separate robberies at two different gas stations within an hour and a half. (*Id*. at pp. 1404-1405.) The jury convicted defendant of two counts of robbery and one count of possession of a firearm by a felon. (*Id*. at p. 1405.) The court sentenced defendant to a consecutive term on the firearm possession count. (*Ibid*.) In analyzing the existing authorities on the issue and distinguishing *Bradford* and *Venegas*, this court "distill[ed] the principle that if the evidence demonstrates at most that fortuitous circumstances put the firearm in the defendant's hand only at the instant of committing another offense, section 654 will bar a separate punishment for the possession of the weapon by an ex-felon." (*Id*. at p. 1412.) This, however, was not such a case. Rather, because the defendant arrived with the handgun already in his possession, and continued to possess it after the first robbery, section 654 did not bar separate punishments for the robberies and the possession of a firearm. (*Id*. at p. 1413.) Additionally, this court declined to follow a series

of cases in which "the courts simply failed to address the issue of prior or subsequent possession of the weapon or, in our view, reached the wrong result on the facts." (*Id*. at p. 1412.)

Applying the law to the facts, this court stated: "In the instant case, the evidence showed that defendant used a handgun to perpetrate two robberies separated in time by about an hour and a half. He still had the gun in his possession when he was arrested half an hour later. Unlike in *Bradford* and *Venegas*, the defendant already had the handgun in his possession when he arrived at the scene of the first robbery. A justifiable inference from this evidence is that defendant's possession of the weapon was not merely simultaneous with the robberies, but continued before, during and after those crimes. Section 654 therefore does not prohibit separate punishments." (*Ratcliff, supra*, 223 Cal.App.3d at p. 1413.)

The defendant in *Jones* was punished for shooting at an inhabited dwelling and being a convicted felon in possession of a firearm. (*Jones*, *supra*, 103 Cal.App.4th at p. 1141.) The court affirmed, holding that "when an ex-felon commits a crime using a firearm, and arrives at the crime scene already in possession of the firearm, it may reasonably be inferred that the firearm possession is a separate and antecedent offense, carried out with an independent, distinct intent from the primary crime. Therefore, section 654 will not bar punishment for both firearm possession by a felon . . . and for the primary crime of which the defendant is convicted." (*Ibid.*) The court found the evidence that the defendant shot at a dwelling "was sufficient to allow the inference that [the defendant's] possession of the firearm was antecedent to and separate from the primary offense of shooting at an inhabited

dwelling." (*Id*. at p. 1147.) Additionally, stated the court, "[i]t strains reason to assume that [the defendant] did not have possession for some period of time before firing shots at the [dwelling]. . . . It was therefore a reasonable inference that [the defendant's] possession of the firearm was antecedent to the primary crime." (*Ibid*.)

Ratcliff and *Jones* provide us with guidance. Just as in those cases, there is justifiable inference that defendant possessed the gun prior to discharging the firearm at an occupied motor vehicle. Unlike in *Venegas*, there is no evidence suggesting that the firearm came into defendant's possession only at the instant that he discharged the firearm at an occupied motor vehicle. In other words, there is no evidence to show that the gun fortuitously came into defendant's possession at the time he discharged the firearm. Rather, the evidence shows that defendant had possession of the gun prior to discharging it. Solis testified that when he and defendant saw Mendez driving toward them, defendant asked Solis to pull over because he was going to shoot Mendez. Solis pulled over and, as defendant was exiting the vehicle, Solis saw defendant pull a previously concealed firearm from under his jacket. The evidence adduced below demonstrates that defendant had actual possession of the weapon prior to and/or after the discharging of the weapon at Mendez. We reject defendant's contentions to the contrary. The trial court properly imposed a concurrent sentence for being a felon in possession of a firearm.

B. *Abstract of Judgment*

At the sentencing hearing, the trial court imposed the middle term of five years for the discharge of a firearm at an occupied motor vehicle conviction, plus a consecutive 25-

year-to-life term for the firearm discharge enhancement, and a concurrent two-year term for the felon in possession of a firearm conviction, for a total term of 30 years to life.

The abstract of judgment notes that the trial court imposed both a 25 year term on the firearm discharge enhancement, and a "25 years to Life on count 2 enhancement."

Defendant contends, and the People concede, that the abstract of judgment should be corrected because it lists his 25 years to life sentence for the firearm discharge enhancement twice, and it could be interpreted as an indeterminate sentence of 50 years to life. We agree and will order the abstract of judgment corrected accordingly.

III

DISPOSITION

The superior court clerk is directed to amend the abstract of judgment to reflect one 25-year-to-life firearm discharge enhancement. The superior court clerk is also directed to send a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

KING
J.